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May 28, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA MESSENGER

Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-204B
Washington, D.C. 20554

Re: Notice of Oral *Ex Parte* Presentation: CC Docket No. 94-54, Interconnection and Resale Obligations Pertaining to CMRS; and PR Docket No. 93-144, Wireless Telecommunications Bureau Request for Comments Regarding Construction Requirements for Commercial Wide-Area 800 MHz Licensees Pursuant to *Fresno Mobile Radio, Inc. v. FCC*, DA 99-979

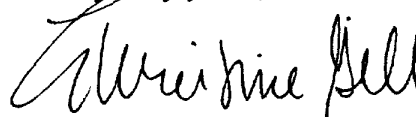
Dear Ms. Salas:

This is to notify the Office of the Secretary that Robert Dawson, President and CEO of Southern Communications Services, Inc., a subsidiary of Southern Company ("Southern"), Michael Rosenthal of Southern Communications Services, Inc., and Christine M. Gill of McDermott, Will & Emery, on behalf of its client Southern, made an oral *ex parte* presentation to James D. Schlichting, Donald Johnson and Jeanne Molinari of the Wireless Telecommunications Bureau on May 28, 1999.

The substance of these conversations with the FCC staff concerned the above-referenced dockets. Attached please find a copy of the talking points used for the meetings.

In accordance with the Section 1.1206 of the Federal Communications Commission rules, 47 C.F.R. § 1.1206, this original and five copies are provided to your office. A copy of this notice has been hand-delivered to Mr. Schlichting.

Very truly yours,


Christine M. Gill

Enclosure

cc: James D. Schlichting
Donald Johnson
Jeanne Molinari

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Talking Points for Meetings With FCC

**800 MHz Commercial Mobile Radio Service
Construction Requirements**

- **Overview**

- The Southern LINC system
 - Uses Motorola's state-of-the-art digital technology to provide dispatch and interconnected mobile service to over 90% of the population in Southern's 120,000 square foot service area
 - Because Southern's service is so widespread, customers in both heavily populated urban areas as well as in scarcely populated rural areas have access to the latest wireless technology.
 - A large number of Southern's customers are public safety entities such as police departments, sheriffs' departments, medical emergency service providers and state and local emergency service agencies.
 - Southern's channel holdings consist primarily of I/LT and business channels, but it also holds General Category, lower 80 and upper 200 category channels.

- **Actions Taken Thus Far on Construction Standard**

- Bureau Waiver of Construction Requirements

On December 4, 1998 WTB found it in the public interest to grant Southern an extension of its construction deadline for its Business and I/LT frequencies. This extension will terminate when final rules in FCC Docket No. 99-87 (Private Spectrum Auctions) take effect or when "the Commission takes action pursuant to Southern's other related pending requests."

- *Fresno Mobile Radio Inc. et al v. FCC*

Southern's Court of Appeal challenge was based on the statutory requirement of regulatory parity among CMRS entities.

February 5, 1999. D.C. Circuit found that the Commission failed to reasonably explain its decision to apply different build-out requirements to EA licensees and incumbent wide-area SMR licensees.

- Issue of comparable construction requirements for incumbent wide-area SMR licensees was remanded to FCC for further consideration. Pending remand FCC prohibited from

denying Southern the benefit of interim coverage requirements.

- On April 15, 1999, FCC issued Public Notice suspending construction deadlines for wide area SMRs.
- **Comparable Construction Requirements for Wide-Area Site-by-Site Licenses.**
 - Apply to Southern's CMRS system the same construction requirements as apply to SMR EA licensees
 - Population and channel use requirements.
 - Based on authorized service area, using EAs and Partial EAs.
 - The Commission has long recognized the value of providing licensees this kind of flexibility.
 - This approach is simple, comparable to other CMRS entities, and in keeping with Commission policy.

Southern Company
Chronology of Regulatory Parity Proceedings

March 18, 1996	Petition for Reconsideration of the First Report and Order and Eighth Report and Order, PR Docket 93-144, GN Docket No. 93-252 and PP Docket 93-253 (First R&O).
July 15, 1996	Response to Request for Rejustification of Extended Implementation Authority , PR Docket 93-144, PP Docket 93-253.
November 27, 1996	Supplement to Request for Rejustification of Extended Implementation Authority , PR Docket 93-144, PP Docket 93-253.
May 20, 1997	Order , DA 97-1059, by Wireless Telecommunications Bureau, denying July 15, 1996 and November 27, 1996 Filings.
June 19, 1997	Application for Review of WTB Order released May 20, 1997.
July 10, 1997	Memorandum Opinion and Order on Reconsideration of the First R&O, denying Southern's March 18, 1996 Petition for Reconsideration.
September 26, 1997	<i>Fresno Mobile Radio Inc. v. FCC</i> Petition for Review of Memorandum Opinion and Order on Reconsideration filed with United States Court of Appeals for the District of Columbia Circuit.
December 2, 1997	Request for Interim Extension of Extended Implementation Authority.
February 6, 1998	Withdrawal of Request for Interim Extension of Extended Implementation Authority.
February 20, 1998	Request for Waiver of 47 C.F.R. § 90.629. Construction deadline

December 4, 1998	Request for Waiver Temporarily Granted for Southern's Business and Industrial/Land Transportation channels, DA 98-2496.
February 5, 1999	<i>Fresno</i> Granted in Part by Court of Appeals: wide-area SMR construction requirements remanded to FCC, 165 F.3d 965.
April 15, 1999	Temporary Suspension of Construction Timetable for wide-area SMRs due to Court of Appeals decision, DA 99-698.
May 21, 1999	Request for Comments on Construction Requirements for wide-area SMRs pursuant to <i>Fresno</i> , DA 99-974.

ROAMING IN THE SPECIALIZED MOBILE RADIO MARKET

HISTORY

Manual Roaming 2nd R&O, June 1996

- roaming a common carrier service
- obligation expanded from cellular to promote competition
- licenses conditioned on compliance

Automatic Roaming 2nd R&O, June 96 / Public Notice, Dec 97

- support – Omnipoint Communications, Telecommunications Resellers Association, ATT Wireless
- opposed – GTE, Southwestern Bell, BellSouth and Nextel

Southern

- Prior Visit / Roaming Significant to Competition
- We Want Commitment
- Alternatives

SMR MARKET

Cellular and PCS:	FCC guarantees multiple providers
1980's:	Growth of cellular
Early 90's:	Nextel consolidates market, Motorola deal / Advent of PCS / Auctions discovered
1994:	SMR – 'A subset of CMRS' – what about dispatch
1995:	SMR – 1 st R&O, 1 entity can license entire spectrums and
Present:	900 band / DOJ / Pittencrief / projections for digital analog

NEED FOR FCC ACTION

- Nextel refuses roaming to Southern
- Nextel is Market, no competition for digital interconnected dispatch from other services
- Nextel Clearnet 97, Intl 99-2000, no technical impediments
- exclusive agent w/ ClearNet / Southern cooperation w/ DOJ

BENEFITS OF ROAMING

- FCC has already recognized significance to competition
- promotes small business, and in this case rural coverage
- E911
- emergency service for public safety entities

CONCLUSION

- Again, we need a commitment